

IN THE SUPREME COURT OF
THE UNITED STATES
OCTOBER TERM 1990

R. O. SEGRAVES, PETITIONER

v.

RALPH M. PARSONS COMPANY,
a Nevada Corporation;
FELIX CUMARE, an individual;
and DOES 1 through 30, inclusive,

PETITIONER'S REPLY
TO RESPONDENTS' BRIEF IN OPPOSITION TO
PETITION FOR WRIT OF CERTIORARI

ROBERT O. SEGRAVES, PETITIONER
138 West Main St. - Suite 124
Ventura, CA 93001
(805) 985-4238

SUMMARY

Respondents' brief erroneously presented, as facts, allegations which they failed to prove at previous hearings and at trial. They also claim US Constitution ~~Amendment~~ 7 does not apply to case, whereas ~~Amendment~~ 7's last clause does apply. Reviewing case's history, the weight of evidence justified the jury's unanimous verdict favoring petitioner and the trial judge erred in ordering a new trial.

Petitioner's rights under US Constitution, ~~Amendments~~ 5, 7, and 14, were denied because of inadequate appellate review. Reporter's transcript was essential to appellate review; but, such transcripts are not available (free) to indigents in California. Thus indigents and petitioner's rights under 5th, 7th and 14th ~~Amendments~~ as well as rights under California Constitution and statutes are and were denied.

It is also obvious petitioner did not and cannot receive a fair trial in California's courts; therefore, any re-trial must be in a federal court.

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RESPONDENTS' STATEMENT OF THE CASE
IS ACCURATE EXCEPT FOR ONE POINT:

In appealing orders throwing-out jury's unanimous verdict favoring petitioner, petitioner did not choose to proceed on judgement roll when he withdrew his request for a reporter's transcript. He had no choice, because he could not afford the \$ 7,000.00 for the transcript.

Filing fees were waived in accordance with California Government Code, Sec. 68511.3; but, courts did not waive reporter-transcript costs, citing Rohnert Park vs Superior Court (1983) 146 CA3d 420, 193 CR 33, where the court denied an indigent a free reporter's transcript based on a common-law rule that is contrary to and superseded by Cal. Govt. Code Sec. 68511.3, the Calif. Cons. Art.1, Sec.7, plus a California Supreme Court opinion, Payne v Superior Court (1976) 17 C3d 908, 132 CR 405, 553 P2d 565, where the court said,

"while the constitutional right of access to the courts has for the most part been related to criminal convictions, particularly by writs of habeas corpus, the due process right is

much broader; it includes access to all courts both state and federal, without regard to the type of petition or relief sought."

In People v Becker (1952) 239 P2d 898, 108

CA2d 764, the California appellate court said,

"the right of every man to his day in court is not limited to trial court but embraces as well his day in appropriate reviewing court,"

In Walker Mining v Industrial Acc. Commission

(1939) 95 P2d 188, 35 CA2d 257, the court said:

"The administration of justice is founded upon the principle that every litigant shall have a fair opportunity to present to the court material evidence in support of his valid claim."

The court's reasoning in Rohnert Park, supra, was not only contrary to foregoing authorities, it defied logic in concluding the legislature would waive relatively small \$ 200 filing fees and then burden indigents with much greater costs (\$ 7,000.00) for reporters' transcripts.

This same right of due process is guaranteed by the Fifth and 14th ~~Amendments~~ to the US Constitution which will be discussed later.

RESPONDENTS' STATEMENT OF FACTS IS NOT ACCURATE
MERELY RESTATING ALLEGATIONS WHICH THEY FAILED
TO PROVE.....

in their appeal of Employment Office decision,
in hearing on Writ of Mandamus against Appeals
Board and at trial when jury found unanimously
for petitioner and judgement entered on verdict.

Petitioner must once again remind a court not
to be influenced by respondents' mis-statement
of facts; however, petitioner is confident this
Court will consider only legal questions raised
by his petition. Still, petitioner is compelled
to comment on specific, erroneous "facts."

On page 6, respondents say, "petitioner was
hired as a "Chief Process Engineer" which is
erroneous. Respondents' letter of May, 1976,
a trial exhibit, offered employment as "the
Director of Plant Operations." Respondents'
failure to properly classify petitioner was
respondents' first breach of the contract.

Respondents say, "Petitioner was discharged
by respondents on February 10, 1984 for good
cause and in good faith." But, the jury found
respondents acted in bad faith and with malice,

as did Employment Office, Appeals Board and Judge at hearing on Writ of Mandate.

Respondents' say on page 7, "Petitioner's claim for libel and intentional infliction of emotional distress were dismissed by trial court on Respondents' request for nonsuit on those claims." But, they fail to say the nonsuit motion was on grounds employers enjoy a privilege which provides immunity from law suits but the qualified privilege is destroyed by malice and the jury found respondents guilty of malice which destroyed their qualified privilege.

Summarizing, respondents terminated contract, claiming petitioner violated rules which did not exist and abused rules which did not exist (by their own testimony). They also presented policy manuals into evidence, but failed to show these unilateral policies were provisions of the contract, i.e. no mutual manifestation of assent with respect to these unilateral policies was ever shown. Yet, the trial judge granted motion for new trial, citing these unilateral policies as grounds for granting their motion.

I. TO COMPLY WITH CONSTITUTIONAL RIGHTS
TO DUE PROCESS, INDIGENT, CIVIL
LITIGANTS MUST BE PROVIDED FREE
REPORTER'S TRANSCRIPTS ON APPEAL.

Respondents' brief points out the United States Supreme Court has made several decisions in this area but never specifically dealt with indigents' right to free reporter's transcripts. In Boddie v Connecticut, 401 US 371 (1971) the court held that indigents were not required to pay court costs in order to sue for divorce:

"given the state monopolization of the means for dissolving the relationship, due process does prohibit a state from denying, solely because of inability to pay, access to its courts to individuals who seek judicial dissolution of their marriages."

But, the court held the constitutional right did not apply to waiver of fees in a voluntary bankruptcy case, United States v Kras 409 US 434 (1973), nor in a welfare-benefit-appeal case, Ortwein v Schwab 410 US 656 (1973).

Respondents say civil litigants are not entitled to free reporters' transcripts on appeal, saying petitioner's interest in his

claim against respondents "has far less constitutional significance than the interests of the Boddie appellants." Respondents also say petitioner's claims against respondents is in the area of economics and social welfare. Nothing could be further from the truth. This case is not a welfare case nor a voluntary bankruptcy. This case involves breach-of-contract !!!

Respondents say petitioner's claims against respondents received a full hearing in trial court. Respondents' subjective approach ignores right of equal access to appeals courts where there is a monopolization of this avenue of justice in "breach-of-contract" cases such as present case. Their approach also ignores that petitioner's appeal was from an ORDER granting respondents a new trial and the entire process violated the US Constitution's 7th Amendment.

Respondent is a billion-dollar corporation, whereas petitioner is an indigent senior citizen (because of respondents malicious actions). No, equal access to appeals court was impossible without the free reporter's transcript.

Petitioner's appeal was also from a nonsuit, preventing jury from considering many causes of action, thus denying due process. If petitioner is entitled to due process on appeal, this must extend to reporters' transcripts as well as filing fees. Otherwise, indigents will always be automatically denied access to complete review of their appeal by appellate courts; and, therefore, they will also be automatically denied a favorable decision without transcripts.

Respondents' last point mentioned in last paragraph on page 13, again attempts to take advantage of petitioner's indigence by saying petitioner waived rights to reporter's transcript when he withdrew his request for a transcript.

As stated earlier in this brief, petitioner had no choice, because he simply could not afford the \$ 7,000.00 cost involved.

This did not amount to a waiver of a right simply because petitioner could not afford to exercise his right to a reporter's transcript and the due process associated with it.

II. LAST CLAUSE OF SEVENTH AMMENDMENT
OF UNITED STATES CONSTITUTION
APPLIES TO ALL COURTS IN THE USA
INCLUDING STATE COURTS

United States Code Service, Constitution,
Ammendment 7 at page 739 says, "Last clause of
the Seventh Ammendment is not restricted in its
application to suits at common law tried before
juries in courts of the United States, and it
applies equally to case tried before jury in
state court, and brought to Supreme Court by
writ of error from highest court of state."
citing Chicago, B. & Q. R. Co. vs Chicago
(1897) 166 US 226, 41 L Ed 979, 17 S Ct 581.
So, again respondents aren't correct saying,
"THE SEVENTH AMMENDMENT OF THE UNITED STATES
CONSTITUTION DOES NOT APPLY TO STATE COURT
PROCEEDINGS." USCS also says on same page 739
"Motion for a new trial on ground of insuffi-
ciency of evidence would not be granted unless
jury verdict was at least against the great
weight of evidence, lest trial court intrude
upon jury's function and affect litigant's
Seventh Ammendment rights; jury verdict would
be upheld despite conflicting evidence.." citing

Spurlin v General Motors Corp. (1976, CA5 Ala)

528 F2d 612, reh den (CA5 Ala) 531 F2d 279.

Next paragraph of USCS says, "Although general rule is that District Court's denial or grant of new trial is within its discretion and ordinarily nonreviewable, in order to protect litigant's Seventh Amendment rights and prevent improper intrusion on jury's function, somewhat broader review applies to order granting new trial as opposed to order denying such motion, and greatest degree of scrutiny is exercised when new trial is granted on ground that verdict is against the weight of evidence." citing Evers v Equifax, Inc. (1981, CA5 Ga) 650 F2d 793.

Similar standards apply to appeal court review of ORDERS granting a new trial in California courts; but, in present case, those standards were not applied because of lack of reporter's transcript. Appellate court could and should have supplemented record with part or all of reporter's transcript to insure petitioner's Amendment 7, 14 and 5 rights as well as his state constitutional rights.

III. UNITED STATES SUPREME COURT HAS JURISDICTION TO REVIEW ANY POSSIBLE VIOLATION OF LAST CLAUSE OF SEVENTH AMENDMENT TO US CONSTITUTION; THEREFORE, RESPONDENTS ARE CORRECT IN SAYING PETITIONER INFERS THERE WAS A VIOLATION OF DUE PROCESS UNDER US CONSTITUTION WITH RESPECT TO LAST THREE QUESTIONS RAISED BY HIS PETITION.

It appears respondents have not read the Petition for Writ of Mandate. Appeals court denied petitioner's application for waiver of filing fee when he attempted to file his Petition for Writ against lower court. The denial violated Sec. 68511.3 and denied petitioner due process. State Supreme Court did not deny application for waiver of filing fee but did uphold the violation by denying his petition for writ.

Lastly, tort and punitive damages for tortious breach of covenant are matters of fact decided by jury and the Foley decision could not alter facts without appellate review because Ammend 7 rights would be denied; therefore, this entire case does fall under the jurisdiction of the US Supreme Court and the court must rule favorably on the petition for writ of certiorari to insure due process, not only for petitioner but also for others, particularly indigents.